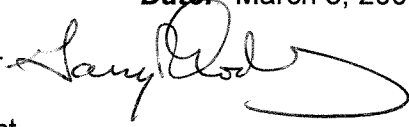


TOWN OF ACTON
Building Department
INTERDEPARTMENTAL COMMUNICATION

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(10)

To: Don P. Johnson, Town Manager **Date:** March 3, 2004
From: Garry A. Rhodes, Building Commissioner 
Subject: Special Permit #08/22/95-353 amendment
1 Keefe Road /30 Great Road

You have asked if the proposed zoning changes would result in Acton Indoor Sports not being required to come before the Board of Selectmen. The question is far more complex than just if they must come before the Board of Selectmen. Acton Indoor Sports must come before the Board either for the requested amendment or a complete new Special Permit depending on the outcome of Town Meeting.

Currently, Acton Indoor Sports property is zoned Small Manufacturing. They are classified as a "Commercial Recreation USE" (§3.5.15). They are requesting an amendment to their Commercial Recreation Special Permit for an accessory use that would allow for the sale of food and beverages § 3.8.2.5. The sale of food and beverages § 3.8.2.5 is only allowed as an accessory use in an industrial zoning district (Small Manufacturing) not in a village zoning district (East Acton Village 2). A restaurant USE is not allowed in the Small Manufacturing District but is allowed in East Acton Village 2.

The proposed zoning changes would place Acton Indoor Sports in East Acton Village 2 District. If Town Meeting adopts the recommended changes the requested Special Permit amendment would be of no good. Acton Indoor Sports would then need a Restaurant (§ 3.5.5) Special Permit. In the first case sale of food is an accessory use, in the second case it would be a second primary use. While the end result would be the same the course is different. The reason for this overlap of the effective date of zoning regulations is both within MGL c. 40A §6 and Acton Zoning Bylaw § 8.5.

Which bylaw controls is a matter of timing and the outcome of Town Meeting. The legal notice for the proposed changes was on January 22, 2004. The requested amendment was on February 6, 2004. Because the legal notice for the proposed zoning change happened before the Special Permit amendment was requested, the proposed zoning changes would control if passed by Town Meeting. The effective date of zoning changes is a very complex issue that places applicants in a Catch 22, if they apply between the date of the legal notice and Town Meeting.